The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the General Government Appropriations Committee

BILL:	CS/CS/SB 2232
INTRODUCER:	General Government Appropriations Committee, Banking and Insurance Committee, and Senator Richter
SUBJECT:	Guaranty Associations
DATE:	April 15, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	**Fav/CS**
2.	Frederick	DeLoach	GA	**Fav/CS**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

Insurance guaranty associations provide a mechanism for the payment of covered claims of insolvent insurance companies. Insurance companies are required by law to participate in guaranty associations as a condition of transacting business in Florida. The bill makes the following changes to insurance guaranty associations governed under ch. 631, F.S.

Florida Insurance Guaranty Association (FIGA)

The bill consolidates the two automobile accounts in FIGA and streamlines the assessment recoupment process insurers use to recover FIGA assessments from their policyholders. Under current law, FIGA can impose regular and emergency assessments against property and casualty insurers to raise funds to pay the claims of an insolvent insurer. An insurance company is allowed by law to pass the assessment through to its policyholders. The bill exempts the recoupment of regular assessments from the imposition of commissions and fees. The recoupment of emergency assessments is currently exempt from insurance premium tax, commission, and fees.

Florida Life and Health Insurance Guaranty Association (FLAHIGA)

The bill increases the coverage limits for some types of claims covered by FLAHIGA, permits insurance agents to provide information about FLAHIGA with potential or current policyholders or annuity purchasers, and makes numerous statutory changes to conform the FLAHIGA statutes to the National Association of Insurance Commissioners model act.

Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)

The bill designates FWCIGA, rather than FIGA, responsible for covering employment liability claims of insolvent workers' compensation insurers.

The bill substantially amends the following sections of the Florida Statutes: 631.52, 631.54, 631.55, 631.57, 631.713, 631.714, 631.717, 631.735, and 631.904.

The bill creates section 631.7295, Florida Statutes.

II. Present Situation:

Insurer Insolvency and Guaranty Associations

Chapter 631, F.S., governs the rehabilitation and liquidation process for insurers in Florida. Federal law specifies that insurance companies are exempted from federal bankruptcy jurisdiction and are instead subject to state laws regarding receivership.[1] Insurers are "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation in the Department of Financial Services (DFS) is responsible for rehabilitating or liquidating insurance companies.

Typically, insurers are put into liquidation when the company is or is about to become insolvent;[2] whereas, insurers are placed into rehabilitation[3] for numerous reasons, one of which is that the insurer is impaired or failed to comply with an order of the office to address an impairment of capital or surplus or both. The goal of rehabilitation is to return the insurer to solvency. The goal of liquidation, however, is to liquidate the business of the insurer and use the proceeds to pay off the company's debts and outstanding insurance claims.

In Florida, five insurance guaranty funds have been established to ensure that policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law. A guaranty association generally is a nonprofit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance company. Insurers are required by law to participate in guaranty associations as a condition of transacting business in Florida.

[1] U.S.C. s. 109(b)(2).
[2] Section 631.061, F.S.
[3] Section 631.051, F.S.

Florida Insurance Guaranty Association (FIGA)

Part II of ch. 631, F.S., governs FIGA, which operates under a board of directors as a nonprofit corporation. FIGA is composed of all insurers licensed to sell property and casualty insurance in the state. When a property and casualty insurance company becomes insolvent, FIGA is required by law to assume the claims of the insurer and pay the claims of the company's policyholders. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

The maximum claim amount FIGA will cover is $300,000, but special limits apply to damages relating to the structure and contents on homeowners', condominium, and homeowners' association claims. For damages to structure and contents on homeowners' claims, FIGA covers an additional $200,000, for a total of $500,000. For condominium and homeowners' association claims, FIGA covers the lesser of policy limits or $100,000 multiplied by the number of units in the association. In addition to any deductible in the insurance policy, all claims are subject to a $100 FIGA deductible.

FIGA is divided into three accounts: auto liability, auto physical damage, and all other property and casualty insurance other than workers' compensation.[4] This "all other" account includes property insurance (such as claims resulting from hurricane-related insolvencies), personal liability, commercial liability, commercial multi-peril, professional liability, and all other types of property and casualty insurance other than automobile and workers' compensation.

Funding is provided by assessments against authorized insurers, as needed for the payment of covered claims and costs of administration. The maximum annual assessment against each insurer is 2 percent of the insurer's net direct written premiums in the state in the prior year, for the types of insurance in each account. FIGA may also impose annual emergency assessments on insurers of up to 2 percent of written premium if necessary to fund revenue bonds issued by a municipality or county to pay claims of an insurer rendered insolvent due to a hurricane. FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states but having claims in Florida.

Insurers pay the assessment to FIGA and submit a rate filing with the Office of Insurance Regulation (office) to recoup the assessment from their policyholders.[5] Pursuant to s. 631.64, F.S., the rates and premiums charged for insurance policies may include amounts sufficient to recoup a sum equal to the amounts paid to FIGA by the member insurer, less any amounts returned to the member insurer by FIGA, and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

Florida Life and Health Insurance Guaranty Association (FLAHIGA)

The powers and duties of FLAHIGA are contained in part III of chapter 631, F.S. All insurance companies (with limited exceptions) licensed to write life and health insurance or annuities in Florida are required, as a condition of doing business in Florida, to be a member of FLAHIGA.

[4]Section 631.55, F.S.
[5]Section 631.57(3)(a), F.S.

In the event a member insurer is found to be insolvent and is ordered to be liquidated by a court, FLAHIGA provides protection to Florida residents who have life and health insurance policies and certain annuities with the insolvent insurer.

The activities of the FLAHIGA are maintained in the following three accounts: health insurance, life insurance; and annuity. When a FLAHIGA member insurer is found to be insolvent and is ordered liquidated, a receiver takes over the insurer under court supervision and processes the assets and liabilities through liquidation. Upon liquidation, FLAHIGA automatically becomes liable for the policy obligations the liquidated insurer owed to its Florida policyholders. FLAHIGA services the policies, collects premiums and pays claims under the policies. FLAHIGA's rights under the policies are those that applied to the insurer prior to liquidation. FLAHIGA may cancel the policy if the insurer could have done so, but normally FLAHIGA continues the policies until the association can transfer (or substitute) the policies to another insurer with approval by the state.

Generally, direct individual or direct group life and health insurance policies, as well as individual and allocated annuity contracts issued by FLAHIGA's member insurers are covered.[6] FLAHIGA maximum coverage limits for a person are set by statute and are:

- Life Insurance Death Benefit: $300,000 per insured life.
- Life Insurance Cash Surrender: $100,000 insured life.
- Health Insurance Claims: $300,000 per insured life.
- Annuity Cash Surrender: $100,000 per contract owner.
- Annuity in Benefit: $300,000 per contract owner.

Section 631.713(3), F.S., specifies life and health policies and annuity contracts from non-licensed insurers and other specified coverage are not covered by FLAHIGA. Nonresidents of Florida and beneficiaries of covered persons are covered by FLAHIGA under limited circumstances.[7] Generally, FLAHIGA covers only policyholders and certificate holders that were Florida residents on the date that a member insurer is declared insolvent and liquidated.

Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)

The FWCIGA pays workers' compensation claims of insolvent insurers and group self-insurance funds authorized in Florida, as well as unearned premium claims. FWCIGA does not have a coverage limit for workers' compensation claims of insolvent insurers. When FWCIGA was created, the responsibility for handling insolvent workers compensation claims was transferred from FIGA to FWCIGA. However, claims under the employer's liability part of a workers' compensation insurance policy continue to be covered by the FIGA. According to representatives of FIGA, FIGA experiences difficulties in the administration of employer liability claims if FIGA is required to assess workers' compensation carriers for a portion of their workers' compensation premium.

[6] Allocated annuity contracts are directly issued to and owned by individuals or annuities that directly guarantee benefits to individuals by the insurer.
[7] Section 631.713(2), F.S.

A workers' compensation insurance policy is divided into Part A and Part B. Part A provides workers' compensation coverage to cover medical expenses, lost income wages, rehabilitation costs and, if needed, death benefits for employees who sustain an injury or illness as a result of their employment. Part B provides employer's liability coverage to cover the employer in the event the injured employee elects not to accept the coverage offered under Part A of the policy. In such case, the employee exercises his or her right to sue the employer and part B defends and protects the employer's interests.

III. Effect of Proposed Changes:

FIGA and FWCIGA (Sections 1-4, and 10)

The structure of FIGA is revised by consolidating the auto liability and auto physical damage accounts into one auto account. Currently, the majority of auto insurers write both types of auto policies. The National Association of Insurance Commissioners Property and Casualty Insurance Guaranty Association Model Act (Model Act) provides for the payment of all auto claims from a single auto account.

Coverage for employer's liability is transferred from FIGA to FWCIGA under section 10 of the bill and is limited to the lesser of $300,000 or the limits of the policy. This amount is the same as FIGA's coverage limit.[8] According to the National Council on Compensation Insurers, the average employer's liability coverage is $100,000. This transfer will streamline the administration of employer's liability claims due to the insolvency of a workers' compensation insurer by giving the FWCIGA responsibility for such claims.

The bill revises the method used by FIGA to impose regular assessments on insurance companies for deficits and streamlines the process used for an insurer to recoup assessments from policyholders. The bill provides legislative intent that all FIGA assessments paid by an insurer are advances of funds from the insurer to FIGA, and the insurer is able to recoup the funds by applying a separate recoupment factor to premiums of policies that are assessed. The bill provides that the regular assessments recouped by insurance companies on or after July 1, 2010, are not subject to fees or commissions. Current law provides that emergency assessments paid by insurance companies to FIGA and recouped from policyholders are not considered premium and thus are not subject to the premium tax, fees, or commissions.

Under current law, once FIGA determines an assessment is needed to cover claims, pay claim administration costs, or pay bonds issued in accordance with the FIGA governing statute, the board certifies the need for an assessment levy to the office. The office reviews the certification submitted by FIGA to justify the assessment. If the certification is sufficient, the office issues an order to all insurers subject to the assessment requiring the companies to pay the assessment to FIGA within 30 days.[9]

Current law provides that insurers paying the assessment can recoup the assessment amount from their policyholders. For regular assessments, the insurer must submit a rate filing to the office

[8] Section 631.57(1)(a)2., F.S.

[9] Emergency assessments are payable at the end of the month after the assessment is levied and can be paid in a single payment or in 12 monthly installments pursuant to s. 631.57(3)(e)1.c., F.S..

that increases rates in an amount equivalent to the assessment amount paid by the insurer and to be recouped from the policyholders.[10] Once the office approves an insurer's rate filing, the rates are increased in an amount that results in a pass through of the assessment to the insurer's policyholders. This allows the insurer to recoup the assessment from policyholders throughout the year upon renewal or issuance of a new policy. Once an insurer recoups the assessment amount from its policyholders, the insurer files another rate filing with the office, which reflects a reduction in rates corresponding to the amount of the regular assessment recouped.

The bill removes the requirement that an insurer must submit a rate filing to pass through the assessment to the policyholders. Instead, companies are allowed to apply a recoupment factor to the premium of the policies subject to the FIGA assessment. The recoupment factor is not subject to approval by the office; but the insurers must submit an informational statement to the office 15 days before they begin to recoup assessments that sets out the amount of the recoupment factor and an explanation as to how the recoupment factor will be applied to policyholders. The recoupment factor can only apply to the lines and kinds of policies that are subject to the FIGA assessment. The recoupment factor must be calculated so as to provide a probable recoupment of over at least one year. If the insurer does not recoup the full amount of the assessment the company paid to FIGA during the initial 12-month recoupment period, the insurer can recoup over another 12 month period. If the insurer recoups from its policyholders more than 15 percent of the assessment amount the insurer paid to FIGA, the insurer must refund the excess funds to its policyholders. Excess funds recouped that are 15 percent or less than the total assessment paid are remitted to FIGA. Within 90 days after the company completes its assessment recoupment, the company must file a final accounting report with the office.

FLAHIGA Provisions (Sections 5-9)

The bill increases some of the coverage limits for FLAHIGA. The coverage limit for life insurance cash surrender remains $100,000; but it is clarified to be based on net cash surrender and net cash withdrawal to codify the calculation method of the coverage limit for life insurance cash surrender that FLAHIGA uses. The coverage limit for deferred annuities is set at $250,000 in net cash surrender and net cash withdrawal values for deferred annuity contracts. The coverage limit for deferred annuities is consistent with many other states. However, if an annuity is in the payout phase, the coverage limit is unchanged and is $300,000.

The bill also allows licensed insurance agents to furnish written information summarizing the claim, cash value, and annuity cash value limits of FLAHIGA to policyholders, applicants for insurance coverage, or prospective policyholders. A similar provision relating to FIGA was enacted in 2009.[11] Current law prohibits advertisements for insurance to use the existence of FLAHIGA for the purpose of the sale of insurance.[12]

The bill also makes numerous changes to current law governing FLAHIGA in order to achieve more uniformity with the National Association of Insurance Commissioners 2009 model act for life and health insurance guaranty associations and to facilitate the administration of multistate

[10] Emergency assessments are not recouped in a rate filing Rather, these assessments are a separate charge that is added to the policy premium and delineated as such in the premium notice. These assessments are recouped at policy issuance or renewal.
[11] Section 14, Ch. 2009-140, L.O.F.
[12] Section 631.735, F.S.

insolvencies through the National Organization of Life and Health Guaranty Associations. These changes are as follows.

Non-Resident Coverage

Generally, FLAHIGA only covers claims made by Florida residents. However, current law allows, when an insurance company domiciled in Florida becomes insolvent, life insurance, health insurance, or annuity policy owners not living in Florida to have their life, health, or annuity claims covered by FLAHIGA under certain circumstances.[13]

Currently, FLAHIGA covers claims by an owner of a life or health insurance policy or an annuity that does not live in Florida at the time the insurer becomes liquidated, in part, if the liquidated Florida insurer was never licensed in the state where the policy owner resides at the time of the insurer's liquidation.[14] Accordingly, in instances where the liquidated insurer was previously licensed in the state where the policy owner currently lives, but is not licensed at the time of liquidation, the policy owner cannot obtain payment of a life or health insurance or annuity claim by FLAHIGA. Moreover, the policy owner is not likely to obtain payment of a claim by the guaranty association in the state where the policy owner resides because the liquidated insurance company is domiciled in Florida and not in that state. Thus, the policy owner is not able to obtain payment of a claim from FLAHIGA or any other state guaranty association upon the insolvency of the insurance company, despite owning a valid insurance policy or annuity issued by the liquidated insurer.

Under the bill, a life insurance, health insurance, or annuity policy owner not living in Florida when their insurance company is liquidated will be able to have FLAHIGA pay the claim if the insurance company that issued the insurance policy was not licensed in the state where the policy owner currently lives during the time which is required by that state's guaranty association to mandate coverage of the claim by that state's guaranty association. The other requirements in current law for coverage by FLAHIGA for claims of policy owners not living in Florida at the time the insurance company is liquidated are not changed. Thus, non-resident policy owners must also meet these three requirements in order to get FLAHIGA coverage of their claim.

Coverage Exclusion Based on Interest and Crediting Rates

An additional type of insurance policy or portion of an insurance policy is added to the list of policies excluded from coverage by FLAHIGA. The bill would exclude policies or parts of policies from FLAHIGA coverage if they are based on an interest rate, crediting rate or an index that calculates interest in an amount greater than an amount calculated in accordance with parameters set forth in this part.

[13] Section 631.713(2), F.S.

[14] A policy owner not living in Florida at the time the insurance company becomes insolvent is covered by FLAHIGA only if these other conditions are met too: the insurer that issued the policy and that is now insolvent is domiciled in Florida at the time of insolvency and if the state where the policy owner resides has a guaranty association but the policy owner is not covered by that state's guaranty association.

Coverage Exclusion for Indexed Products

The bill also excludes from coverage by FLAHIGA any interest credited to a life or health insurance policy or annuity or changes in value to those types of policies if the interest is credited to the policy or the policy value changes after the date the insurer becomes impaired or insolvent, whichever is earlier. This exclusion is needed because changing the value of policies of insolvent insurers after liquidation is inconsistent with current law providing that the liquidation date sets the value of the policy.[15] But, if the insurance policy allows interest to be credited to the policy more frequently than annually, then the bill allows any interest that would accrue to the policy as of the date of impairment or insolvency of the insurance company issuing the policy to be credited to the policy.[16] Thus, the policy amount covered by FLAHIGA will be the amount set by the policy terms at the date of impairment or insolvency, whichever date is earlier.

Coverage Exclusion for Medicare Advantage Policies

Insurance policies that provide health care benefits under Medicare[17] Part C or D or under regulations issued pursuant to Medicare Part C or D are not covered by FLAHIGA.

Coverage for Structured Settlement Annuities

The bill specifies structured annuities are covered by FLAHIGA up to a maximum of $300,000 if the payee or beneficiary under the annuity contract does not reside in Florida and that neither the payee, beneficiary or annuity contract owner can obtain coverage for the structured annuity from the guaranty association in the state where the annuity contract owner resides.

Insolvent Insurer Definition Change

Under current law, in order for an insurance company to meet the statutory definition of "insolvent insurer," a court order of liquidation with a finding of insolvency is required and all appellate review of the order must be complete. The bill removes the requirement that all appellate review of a court order of liquidation must be complete before an insurer can be found to be insolvent. According to representatives of FLAHIGA, only five or six guaranty associations have the appellate exhaustion requirement. They further contend this requirement makes coordination of nationwide liquidation plans difficult. Additionally, because court orders of liquidation are frequently appealed on collateral matters and not on the finding of insolvency, FLAHIGA representatives believe removal of the appellate exhaustion requirement is not problematic. In fact, removal of the requirement will allow FLAHIGA to cover policyholders of the insolvent insurance company during the pendency of an appeal.

[15] ss. 631.192, F.S. 631.351, F.S., and 631.252, F.S.

[16] The pertinent date is the earlier date of the date of impairment or the date of insolvency. Impairment occurs when the minimum surplus required under s. 624.408, F.S., has been dissipated and the insurer does not have assets at least equal to all its liabilities including its total issued and outstanding capital stock; or, when the surplus of an insurer does not comply with s. 624.408, F.S. [s. 631.011(12) and (13), F.S.]. Insolvency occurs when all of the assets of an insurer, if made immediately available, are insufficient to discharge all its liabilities or the insurer is unable to pay its debts as they become due [s. 631.011(14), F.S.].

[17] Generally, Medicare provides health insurance program for people age 65 or older. Medicare has four parts: hospital insurance (Part A), medical insurance (Part B), Medicare Advantage (Part C), and prescription drug coverage (Part D).

Resident Definition Change

The bill amends the definition of "resident" to provide clarification as to what state is a principal place of business and what state is the residence of a person living abroad. Generally, FLAHIGA only covers Florida residents who are owners of life and health insurance policies and certain annuities of an insolvent insurer.[18] The bill specifies that in the case of a person other than individual, the "residence" of the business is the state in which they have their principle place of business. The bill specifies persons living abroad are residents of the state of domicile of the insurance company that issued the insurance policy or contract as long as the place where the person living abroad lives does not have a guaranty association. This ensures citizens living abroad who purchase life or health insurance or annuities have their claims covered by a guaranty association if the insurance company insuring the policy or selling the annuity becomes insolvent.

Issuance of Substitute Coverage for Indexed Product

Section 631.717(12), F.S., authorizes FLAHIGA to substitute life and health insurance policies in lieu of life and health policies issued by an insolvent insurance company if the Department of Financial Services approves the substitution. Current law, however, does not allow FLAHIGA to substitute policies for policies of an insolvent insurance company that are indexed and accrue interest or crediting in accordance with the index. The bill allows FLAHIGA to substitute policies for indexed life insurance policies, indexed health insurance policies, or indexed annuities as long as the substituted policies are substantially similar to the replaced policy. The bill also places requirements on the policies that are substituted, such as requiring these policies to have a fixed interest rate or payment of dividends with minimum guaranteed dividends, or a different method for calculating interest. Approval by the receivership court is required before FLAHIGA can substitute policies for indexed products.

FLAHIGA Coverage By An Insolvent Insurer's Reinsurance

Section 631.205, F.S., allows a receiver of an insolvent insurer to be paid under the insolvent insurer's reinsurance contract unless the reinsurance contract contains a clause naming the insolvent insurer a direct beneficiary of the reinsurance contract. The bill allows FLAHIGA to continue coverage under the insolvent insurer's reinsurance policy as long as FLAHIGA pays all unpaid premiums on the reinsurance contract. This will allow FLAHIGA to assume the role of the insolvent insurer in any reinsurance contracts the insurer has at liquidation. Thus, FLAHIGA will be able to collect payments owed to the insolvent insurer by the reinsurer.

Section 11 provides that this bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[18] Section 631.713(2)(b)1., F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The proposed changes relating to FIGA's regular assessment would streamline the assessment and recoupment process for insurers.

The exemption of FIGA regular assessments from commissions would result in lower commissions for agents. According to representatives of FIGA, commissions range from 7 to 12 percent of premium contingent upon the line of insurance. However, emergency assessments for FIGA and assessments for Citizens and the Florida Hurricane Catastrophe Fund are exempt from commissions.

The increased coverage limits for FLAHIGA will allow policyholders having life, health, or annuity claims against insolvent insurers to obtain greater funds for payment of claims. The increased coverage limits for FLAHIGA, however, also result in greater claims payments by FLAHIGA. Greater claims payments by FLAHIGA could lead to an increased likelihood of a deficit in FLAHIGA and resulting assessments on member insurers because FLAHIGA is funded by assessments against member insurers if FLAHIGA does not have sufficient funds to pay claims.[19]

C. Government Sector Impact:

The bill eliminates rate filings associated with the recoupment of regular assessments. The bill has no fiscal impact on the office.

VI. Technical Deficiencies:

None.

[19] Section 631.718, F.S., limits the annual assessment amount against member insurers. Class A assessments which are used to meet administrative costs, general expenses, and insurer examination costs are limited to $250 per member insurer per year. Class B assessments which are used to pay the claims of the insolvent insurer are limited to one percent of the member insurer's premiums written in Florida. A portion of any assessment paid by a member insurer can be credited against the insurer's premium or corporate income tax. [See s. 631.72, F.S.] FLAHIGA assessments are not passed through to policyholders by member insurers.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by General Government Appropriations on April 13, 2010
The committee substitute makes the following technical revisions to the bill.

- Deletes the term "regular" and replaces it with "assessments levied under paragraph A."
- Replaces the phrase "informative statement" to "report."
- Changes the effective date to July 2010.

CS by Banking and Insurance on April 7, 2010:

- Reinstates the imposition of the insurance premium tax on the amount an insurer recoups from policyholders for FIGA regular assessments.
- Revises the treatment of recoupment charges collected by insurers that exceed the FIGA assessment amount.
- Provides technical and clarifying changes.

B. Amendments:

None.